

SIXTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, January 14, 1884.

Senate met pursuant to adjournment.
Lieutenant-Governor Martin in the chair.
Roll called.

Quorum present.

Prayer by the Chaplain.

On motion of Senator Kleberg,

The reading of the journal of Saturday was dispensed with and adopted.

Senator Buchanan submitted a memorial from the citizens of Wood county, relative to wire fences and public schools.

Referred to Committee on Public Lands.

Senator Gooch, chairman of Judiciary Committee No. 2, submitted the following reports:

COMMITTEE ROOM,
AUSTIN, January 12, 1884.

Hon. Marion Martin, President of the Senate:

Your Judiciary Committee No. 2, to whom was referred Senate bill No. 24, entitled "An act to amend article 684, chapter 4, title 17, of the Penal Code, and add thereto articles 684a and 684b, have examined the same, and instruct me to report that it lay on the table. The bill amends article 684, with reference to leaving open gates, etc. Its object is to increase the maximum penalty to a fine of \$500. This would place it beyond the jurisdiction of justices of the peace, and is not believed to be good policy. The bill adds article 684a, which increases the penalty for fence cutting. A separate bill has been reported on this subject, favorably, from this committee. Article 684 authorized the indictment and prosecution of fence cutters in Travis county, regardless of the county in which the offense is committed. We think this against the genius of our laws, and not justified except under very extraordinary circumstances, which do not exist in this case. This policy was followed in cases of forgery, because the records and officers of the General Land Office, were often required before the courts trying the case, and it was impracticable in many cases to ascertain in what locality the forgery was committed; and this was another reason why prosecutions might be had in Austin, Travis county. This article also makes the limitation twenty years. We do not think the limitation should be different in these cases, and other similar cases.

All of which is respectfully submitted.

GOOCH, Chairman.

Bill read first time.

COMMITTEE ROOM,
AUSTIN, January 14, 1884.

Hon. Marion Martin, President of the Senate:

Your Judiciary Committee No. 2, to whom was referred Senate bill No. 26, entitled "An act to amend article 570 of the Penal Code of the State of Texas, have carefully examined the same, and instruct me to report the same back with the recommendation that it lay on the table. Its object is to make it justifiable homicide to kill another in the act of wantonly destroying fences, and another bill has been reported, on the same subject, by this committee.

All of which is respectfully submitted.

GOOCH, Chairman.

Bill read first time.

Senator Martin, chairman of the Committee on Engrossed Bills, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 14, 1884.

Hon. Marion Martin, President of the Senate:

Your Committee on Engrossed Bills have carefully examined and compared Senate bill No. 3, being "An act to donate all the public domain in the State of Texas to the public free school fund," and find the same correctly engrossed.

MARTIN, Chairman.

Senator Collins, chairman of Committee on Stock and Stockraising, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 12, 1884.

Hon. Marion Martin, President of the Senate:

Your Committee on Stock and Stockraising have considered Senate bill No. 2, and a majority thereof instruct me to report the same back with the recommendation that it do pass with the accompanying amendments.

The bill, in the judgment of a majority of your committee, proposes to regulate the grazing of stock in Texas on the only basis which can secure property rights of all.

The difficulty of enforcing a law that would require all citizens to pasture or herd their stock on their own land must be apparent.

The limited means of a great multitude of people would render it extremely difficult to enforce a strict herd law, especially in the timber regions of the State.

On the other hand, what was once public domain is now owned by individuals, or is held by the State in trust for the education of the children of Texas.

These lands are not public, and no man or set of men have a right to fatten their herds on grass not their own, growing on lands dedicated to educate our youth. These school lands embrace over thirty millions of acres, the lease of which would educate, with other available funds, every child in Texas, without taxing the people. The State is no less bound after conveying lands to individuals, which are valuable only for the grass, to protect them also in its use.

In the judgment of a majority of your committee the Legislature could not, if it desired, punish as an offense unauthorized grazing on school lands, and yet permit such depredations on the land of private parties. Such a law the courts would not enforce. The school lands are, most of them, scattered over fifty-four unorganized counties, and as the tax rolls show, they are now covered over with herds of stock. The civil tribunals as now organized, are powerless there, and while stock men, many of whom reside in other States, are being made rich by grazing herds in the Pan Handle free of cost, the agricultural and every other industry is being taxed for their benefit. This, in the judgment of a majority of your committee, is unjust, and they believe that the bill will compel the lease of those lands to those who use them. Free grass should cease, since the public domain has become either private property, or a trust fund for education. Severe penalties alone against offenses which are encouraged by a spirit of communism, can never protect property so long as the State remains the chief communist by permitting free grass on private property.

1. The bill requires all persons owning over a limited amount of stock for domestic use, to have somewhere in the county, either owned or leased, land adequate for its support before it is turned loose to graze.

2. It prohibits any one having a pasture from turning stock on the surrounding range, unless he owns unenclosed land enough for its support.

3. It prohibits one man from herding his stock on another man's land.

4. It prohibits the use of a man's grass enclosed in a large pasture, by another, and allows the pasture owner to avoid a penalty by fencing it to itself.

5. If one uses his land in another man's pasture, it regulates as a matter of right the number of cattle he may turn loose in the pasture in proportion to his land.

6. It gives a right of way over lines of surveys to a public road to those whose lands are surrounded by the pasture fence of another.

7. The bill protects the poor man by exempting from its provisions the stock necessary for the support of his family.

For violating these sections it imposes the same penalty visited on him who destroys a fence.

Texas must vindicate her laws and protect property rights; but in doing this her laws should be just, alike to the rich and the poor; and such we believe are the provisions of the bill. Once enacted, we believe that penalties will rarely be required, for the people, recognizing its justice, will observe it.

The penalties for violating all provisions of the bill, except that relating to cutting fences, are postponed until July, 1884, that all persons owning stock and no grass may have time to buy or lease land.

The temporary lease of school land at four cents per acre, deposited with the State Treasurer until a regular lease under the law can be made is provided for. Thus the entire cost of

sustaining a steer on ten acres of school land for twelve months would be but forty cents—a small amount to the stock raiser, but it would yield *twelve hundred thousand dollars* per annum to educate the children of the people.

Thus it will be seen that habits of the people in raising stock loose on the range are not rudely disturbed, but cattle would be still left to run at large if their owner controlled land adequate to their support in the county.

Other features in the bill, intended to guard against its violation and protect existing conditions need not be mentioned.

To enforce this proposed law, it organizes a new tribunal known as Commissioners of Pasturage, with the salaries of district judges, and with jurisdiction all over the State. The Governor is required to equip and organize an armed constabulary force, to act in obedience to law, under his orders, and who shall accompany the Commissioners of Pasturage, to make arrests, etc. A Commissioner of Pasturage, with an abstract of marks and brands, titles and leases, and accompanied with an armed escort, can inspect the remotest corner of the Panhandle, and, under the provisions of the bill, order arrests on affidavit as permitted by the Constitution, or on a view.

A majority of your committee are convinced that Texas can never have cause to fear such a force.

The great trouble now is too much law and too little means for enforcing that which is designed to protect the rights of persons and property.

When organized from her own people, her frontier battalion has never been a terror, except to violators of law.

New judicial tribunals clothed with special powers and a physical force can alone compel obedience to law in vast territories covered with cattle and remote from settled populations and courts.

In conclusion, a majority of your committee submit that the passage of the bill will, in their judgment, restore order, give security to property now jeopardised by lawless organizations, curb the temptation to destroy fences by removing existing evils, preventing an over-stocking of the range, and relieve, at the same time, the people from a yearly tax of over twelve hundred thousand dollars. The majority of your committee know of no other bill thus far presented by a senator which covers the whole ground of existing evils connected with stock grazing, and at the same time points out remedies for their correction. They therefore recommend its patient consideration in committee of the whole, that further amendments, if found necessary, may be made, and that the same do pass.

RUD. KLEBURG,
A. S. MATLOCK,
N. G. COLLINS.

I agree to report the bill favorably with the amendments, but do not concur in all the reasons given therefor, but desire it brought before the Senate for action.

JNO. H. TRAYLOR.

Committee amendments to Senate bill No. 2:
Section 1, amendment, five instead of ten acres.
One hundred head exempted instead of twenty five.
Law to take effect in one year instead of six months.

Senator Farrar introduced the following bills:

A bill to be entitled "An act to authorize the several county commissioners' courts of the State to provide for more than four terms of the county court, annually for the transaction of the civil and criminal business."

Referred to Judiciary Committee No. 1.

A bill to be entitled "An act to amend articles 1801, 1802, 1823, 1867, 1921, 1923, 1924, 1932, 1934, 1944, 1949, 1964, 1973, 1974, 1978, 2025, 2041, 2056, 2057, 2067, 2068, 2070, 2071, 2072, 2081 and 2182 of the Revised Statutes of Texas."

Referred to Judiciary Committee No. 1.

The following communication from Dr. A. N. Denton, Superintendent of the Lunatic Asylum, was read by the Secretary, and

On motion of Senator Farrar,

The request was granted and the President authorized to appoint committee:

AUSTIN, January 10, 1884.

Hon. Marion Martin, President of the Senate:

I respectfully request that you appoint a committee of Senators to act in conjunction with a like committee from the House, whose duty it shall be, at some time during the present session of the Legislature, to inspect this Asylum and its inmates, and also note the amount and character of the improvements that have been made during the present administration.

Very respectfully,

Your obd't servant,

A. N. DENTON,
Supt. S. L. A.

Senator Gibbs moved that a like committee be appointed to visit and inspect the Deaf and Dumb Asylum.

Adopted.

The President appointed Senators Farrar, Buchanan and Shannon as committee to visit and inspect the Lunatic Asylum.

Also, Senators Gibbs, Harris and Traylor as committee to visit and inspect the Asylum for the Deaf and Dumb.

Senator Jones moved to suspend the regular order of business and take up Senate joint resolution No. 3, "Joint resolution requesting Texas Senators and Representatives to urge the passage of a bill by Congress granting the right of way through the Indian Territory to the Gulf, Colorado and Santa Fe railway company."

Adopted, and

Bill taken up and read second time, with committee amendment, and,

On motion of Senator Jones.

The committee amendment was adopted.

Senator Gibbs offered the following amendment:

Amend by inserting instead of "Fort Worth," "from any point they may determine."

Senator Chesley offered the following substitute for the amendment of Senator Gibbs:

Amend by inserting after the words "Fort Worth" "or any other point said company may desire."

Accepted, and

Amendment adopted.

Senator Matlock offered the following amendment:

Add after "Gulf, Colorado and Santa Fe railroad company," "or any reliable railroad company."

Senator Chesley moved to lay the amendment of Senator Matlock on the table, which was

Lost by the following vote.

YEAS—8.

Chesley,
Farrar,
Getzendaner,

Harris,
Jones,
Patton.

Stratton,
Traylor.

NAYS—16.

Buchanan,
Collins,
Davis,
Evans,
Fowler,
Gibbs,

Gooch,
Johnson of Collin,
Kleberg,
Martin,
Matlock,

Peacock,
Pope,
Randolph,
Shannon,
Terrell.

Senator Matlock's amendment was then adopted by the following vote:

YEAS—14.

Buchanan,
Collins,
Cooper,
Evans,
Fowler,

Gibbs,
Gooch,
Johnson of Collin,
Martin,
Matlock,

Peacock,
Pope,
Randolph,
Terrell.

NAYS—11.

Chesley,	Harris,	Shannon,
Davis,	Jones,	Stratton,
Farrar,	Kleberg,	Traylor.
Getzendaner,	Patton,	

The bill was ordered engrossed.

Senator Harris moved to suspend the rules and place the bill on its third reading.

Adopted, by the following vote:

YEAS—25.

Buchanan,	Gibbs,	Patton,
Chesley,	Gooch,	Peacock,
Collins,	Harris,	Pope,
Cooper,	Johnson of Collin,	Randolph,
Davis,	Jones,	Shannon,
Evans,	Kleberg,	Stratton,
Farrar,	Martin,	Terrell,
Fowler,	Matlock,	Traylor.
Getzendaner,		

NAYS—none.

Bill read third time and passed.

On motion of Senator Peacock

Senator King was excused for three days on account of important business.

On motion of Senator Randolph

Senator Pfeuffer was excused for the day.

On motion of Senator Kleberg

Senator Houston was excused for the day.

Senator Patton, chairman of Committee on State Affairs, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 14, 1884.

Hon. Marion Martin, President of the Senate:

Your Committee on State Affairs, to whom was referred Senate bill No. 19, entitled "An act to increase the Frontier Battalion, and to further prescribe the powers and duties of the Governor and of the members of said battalion and to make an additional appropriation to defray the expenses thereof," have carefully examined the same, and find sections one and two, requiring the Governor to increase the numerical strength of the frontier battalion, objectionable. They think the law now in force, which authorizes the increase of said battalion to 450 men, rank and file, adequate for any probable contingency under which said force might constitutionally be used. They also find that there is no adequate appropriation which can be used should the militia of the State be called in to active service, and they think the appropriation which the bill proposes to make should be so made, that it may be used in the discretion of the Governor either for the support of the frontier battalion or the militia, when called into active service, and they have prepared a substitute for said bill, embracing the ideas herein set forth, which substitute is herewith returned and asked to be substituted for the bill, and they recommend that the bill so substituted do pass.

All of which is respectfully submitted.

PATTON, Chairman.

Bill read first time with committee substitute.

Senator Kleberg moved to suspend the rules, and take up Senate bill No. 19, with the committee substitute just reported.

Adopted by the following vote:

YEAS—21.

Buchanan,	Gooch,	Patton,
Chesley,	Harris,	Peacock,
Collins,	Johnson of Collin,	Pope,
Cooper,	Jones,	Randolph,
Evans,	Kleberg,	Shannon,
Fowler,	Martin,	Terrell,
Getzendaner,	Matlock,	Traylor.

NAYS—3.

Davis,	Gibbs,	Stratton.
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Bill and committee substitute read second time, and

Substitute adopted.

Senator Gibbs offered the following amendment:

Amend by inserting "State detectives," in caption, and after "State militia" in section 2.

A message was received from the House informing the Senate of the passage by that body of a joint resolution "requesting our Senators and Representatives in Congress to assist in opening the Western Cattle Trail, which passes through the Cheyenne and Arrapahoe reservations, Indian Territory."

Senator Stratton moved the previous question on the substitute for Senate bill No. 19, and the amendment of Senator Gibbs.

Lost.

Amendment of Senator Gibbs adopted by the following vote:

YEAS—15.

Chesley,	Gibbs,	Johnston of Shelby,
Davis,	Gooch,	Martin,
Evans,	Harris,	Patton,
Fleming,	Houston,	Shannon,
Getzendaner,	Johnson of Collin,	Traylor.

NAYS—13.

Buchanan,	Jones,	Pope,
Collins,	Kleberg,	Randolph,
Cooper,	Matlock,	Stratton,
Farrar,	Peacock,	Terrell.
Fowler,		

Senator Davis offered the following amendment:

Amend the bill so as to make the State responsible in damages for all illegal arrests, and other wrongs done by the military under cover of authority.

Senator Chesley offered the following substitute for the amendment of Senator Davis:

Amend section 1 by adding the following:

Provided, that before entering upon the discharge of their duties all officers, non-commissioned officers and privates shall each take an oath before some authority legally authorized to administer the same, that they will faithfully perform their duties in accordance with law.

Senator Randolph offered the following amendment to the amendment of Senator Davis:

Amend the amendment by striking out "State" and insert "fence cutter."

Adopted by the following vote:

YEAS—15.

Buchanan,	Getzendaner,	Patton,
Chesley,	Gooch,	Peacock,
Collins,	Houston,	Randolph,
Fleming,	Jones,	Terrell,
Fowler,	Matlock,	Traylor.

NAYS—12.

Cooper,	Harris,	Martin,
Davis,	Johnson of Collin,	Pope,
Evans,	Johnston of Shelby,	Shannon,
Farrar,	Kleberg,	Stratton,
Gibbs,		

Senator Chesley's substitute for the amendment of Senator Davis was

Adopted by the following vote:

YEAS—18.

Buchanan,	Getzendaner,	Matlock,
Chesley,	Gooch,	Patton,
Collins,	Harris,	Peacock,
Evans,	Houston,	Randolph,
Farrar,	Johnson of Collin,	Terrell,
Fowler,	Martin,	Traylor.

NAYS—10.

Cooper,	Johnston of Shelby,	Pope,
Davis,	Jones,	Shannon,
Fleming,	Kleberg,	Stratton.
Gibbs,		

Senator Davis offered the following amendment:
Amend the substitute by adding:

And shall each give bond in the sum of two thousand dollars, payable to the State, with good and sufficient sureties to be approved by the Governor, conditioned for the faithful performance of all duties required of them by law, and upon which any person suffering injury may maintain suit.

Senator Gooch moved the previous question on the amendment and bill.

Motion seconded and main question ordered.

Senator Davis' amendment was lost by the following vote:

YEAS—10.

Cooper,	Gibbs,	Matlock,
Davis,	Johnson of Collin,	Randolph,
Evans,	Jones,	Shannon,
Farrar,		

NAYS—17.

Buchanan,	Gooch,	Patton,
Chesley,	Harris,	Peacock,
Collins,	Houston,	Stratton,
Fleming,	Johnston of Shelby,	Terrell,
Fowler,	Kleberg,	Traylor.
Getzendaner,	Martin,	

Senator Chesley's substitute was adopted as an amendment to the bill, and

Bill as amended was ordered engrossed by the following vote:

YEAS—18.

Buchanan,	Getzendaner,	Martin,
Chesley,	Gooch,	Matlock,
Collins,	Harris,	Patton,
Evans,	Houston,	Peacock,
Fleming,	Johnston of Shelby,	Stratton,
Fowler,	Kleberg,	Terrell,

NAYS—9.

Cooper,	Gibbs,	Randolph.
Davis,	Johnson of Collin,	Shannon,
Farrar,	Jones,	Traylor.

Senator Shannon, by leave, introduced a bill entitled "An act to prescribe the duties of, and to enable sheriffs to enforce the laws in the various counties in this State."

One hundred copies ordered printed, and

Referred to Judiciary Committee No. 2.

Senator Houston entered a motion to reconsider the vote by which Senate bill No. 19 was ordered engrossed.

The President referred the House concurrent resolution instructing our Senators and Representatives in Congress to urge the passage of a bill in Congress granting right of way across the Indian Territory to the Texas, Oklahoma and Kansas railway company, to Committee on Federal Relations, also

Concurrent resolution instructing our Senators and Representatives in Congress to provide for a court to try offenses committed in the Indian Territory,

To Committee on Federal Relations.

On motion of Senator Houston.

The Senate adjourned until 10 o'clock a. m. tomorrow.

SEVENTH DAY.

SENATE CHAMBER,
AUSTIN, TEXAS, January 15, 1884.

Senate met pursuant to adjournment.

Lieutenant-Governor Martin in the chair.

Roll called.

Quorum present.

Prayer by the Chaplain.

On motion of Senator Traylor,

The reading of yesterday's journal was dispensed with, and the same adopted.

Senator Jones presented a memorial of Mrs. A. E. Hubby and others on "unpaid salaries of school teachers."

Referred to Judiciary Committee No. 1.

Senator Matlock, Chairman of Committee on Public Lands, submitted the following report:

COMMITTEE ROOM,
AUSTIN, January 15, 1884.

Hon. Marion Martin, President of the Senate:

Your Committee on Public Lands, to whom was referred Senate bill No. 33, entitled "An act to provide for the lease of school lands belonging to unorganized counties," have carefully examined the same, and instruct me to report the same back, with the recommendation that it do pass.

All of which is respectfully submitted,

MATLOCK, Chairman.

Bill read first time.

Senator Evans, for a majority of the Committee on Roads, Bridges and Ferries, submitted the following report:

SENATE CHAMBER,
AUSTIN, January 15, 1884.

Hon. Marion Martin, President of the Senate:

A majority of your Committee on Roads, Bridges and Ferries, to whom was referred Senate bill No. 36, entitled "An act to require the commissioners courts to lay out and open certain first-class roads," have had said bill under careful consideration and have instructed me to report the same back with the recommendation hereinafter stated.

The object of the bill is not only to have first-class roads, extending from one county site to another, but that those roads shall be placed on the most suitable grounds for road purposes—and be on as near a direct route as practicable—avoiding the crooks and turns, now so often met with, as well as to avoid and prevent roads from being run over places where it is impracticable to make good roads, and to prevent the commissioners court from making, for the benefit of private individuals, changes in those roads, which has so frequently been done to the great detriment of the traveling public.

In the more densely populated counties the first class roads have been so frequently changed for private convenience that they now run in such zigzag courses that it requires the public to travel nearly twice the distance formerly travelled in passing from one point to another, and in consideration of the fact that in such counties land is advancing in value at such a rapid rate that in a few years from now the cost and expense of making these roads straight, will be so great that it will impose a burden more than any county can afford to pay the damages accruing by reason of making straight these crooked highways. The object of this bill is to do this thing at once, that the public may be benefited thereby. It also provides for the opening out of roads in the unorganized counties, which should be done at once, so that counties that are now fenced entirely for pasture purposes, may have highways through them which if done will have a tendency to do away with the complaint made against the large pastures because of there being no roads or passways through them for public convenience, and that all pastures or enclosures hereafter made there may conform to the roads thus laid out.

It is therefore recommended that said bill do pass.

EVANS for majority of Committee.

Bill read first time.

Senator Perry, chairman of the Committee on